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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 TABATHA FRERKS, et al.,

9 Plaintiffs,

10 v.

11 TODD P. WOLF, et al.,

12 Defendants.

CASE NO. C19-978 RSM

ORDER

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14 This matter is before the Court following Plaintiffs' Response to Order to Show Cause.
15 Dkt. #52. On February 19, 2020, the Court noted that Plaintiffs had not filed proofs of service
16 as to three defendants as required by the Federal Rules of Civil Procedure. Dkt. #51 at 1. The
17 Court further noted Plaintiffs' ninety days to serve defendants had expired. Dkt. #51 at 1 (citing
18 FED. R. CIV. P. 4(m)). The Court accordingly ordered Plaintiff to respond and explain

19 (1) the manner in which Plaintiffs have served these defendants in accordance
20 with the Federal Rules of Civil Procedure, and (2) if defendants have not yet been
21 served in accordance with the Federal Rules of Civil Procedure, why the Court
should allow Plaintiff additional time to properly serve defendants.

22 Dkt. #51 at 2.
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1 Plaintiff's Response directed the Court to a September 24, 2019 affidavit of service which
2 the Court believes is document 42.¹ Dkt. #52 at 2. Plaintiffs further indicate that since that
3 September 24, 2019 filing, they "believed they had properly demonstrated to the court service by
4 mail is adequate and was effectively completed." *Id.* Nevertheless, Plaintiffs again explain that
5 they rely on "FRCP 4(d)(7)"—which does not exist—and "FRCP 4(e)(1)." *Id.*

6 To the extent Plaintiffs rely on Rule 4(d) to argue that mailing a waiver of service request
7 to the defendants was sufficient, they are wrong. *See Cambridge Holdings Grp., Inc. v. Fed. Ins.*
8 *Co.*, 489 F.3d 1356 (D.C. Cir. 2007) (Rule 4(d) permits waiver of service—effective on filing of
9 the completed waiver—but does not permit service by mail); FED. R. CIV. P. 4(d)(2) (imposing
10 "the expense later incurred in making service" if waiver is not signed and returned without good
11 cause).

12 Plaintiffs argument that service was proper under Rule 4(e)(1) is similarly unavailing.
13 That rule allows for service by "following state law for serving a summons in an action brought
14 in courts of general jurisdiction in the state where the district court is located." FED. R. CIV. P.
15 4(e)(1). Plaintiffs point to Revised Code of Washington section 4.28.080(17) providing:

16 where the person cannot with reasonable diligence be served as described, the
17 summons may be served as provided in this subsection, and shall be deemed
18 complete on the tenth day after the required mailing: By leaving a copy at his or
19 her usual mailing address with a person of suitable age and discretion who is a
20 resident, proprietor, or agent thereof, and by thereafter mailing a copy by first-
class mail, postage prepaid, to the person to be served at his or her usual mailing
address. For the purposes of this subsection, "usual mailing address" does not
include a United States postal service post office box or the person's place of
employment.

21 WASH. REV. CODE § 4.28.080(17). But Plaintiffs have not attempted to make the required
22 showing for service under that provision of Washington law. Plaintiffs have not shown that they

24 ¹ Plaintiffs cite to document 40, but the Court believes this is a mistake.

1 were unable to serve defendants “with reasonable diligence,” that they left copies at defendants’
2 “usual mailing address with a person of suitable age and discretion,” or that they mailed a copy
3 to defendants’ “usual mailing address.” Accordingly, Plaintiffs do not establish that they have
4 properly effected service in accordance with the Federal Rules of Civil Procedure.

5 Lastly, Plaintiffs request “additional time to perfect their error because plaintiffs have
6 clearly demonstrated good cause for this extension of time and an extension of time is proper
7 pursuant to FRCP 4(m).” Dkt. #52 at 4. While Plaintiffs’ arguments that they have properly
8 served the absent defendants lack legal merit, the Court notes the reasonable possibility that
9 Plaintiffs, proceeding pro se, may have misunderstood the applicable legal requirements. Having
10 explained that Plaintiffs have not properly served the absent defendants, the Court will grant
11 Plaintiffs’ request for an extension of time to effect service.²

12 Accordingly, the Court finds and ORDERS that Plaintiffs must properly serve the
13 remaining defendants within thirty (30) days of the date of this Order. No further extensions will
14 be granted. Failure to properly serve the remaining defendants will result in dismissal of this
15 case.

16 Dated this 5th day of March 2020.

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18 RICARDO S. MARTINEZ
19 CHIEF UNITED STATES DISTRICT JUDGE
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23 ² The Court does wish to note for Plaintiffs, however, that many of the Court’s concerns resulting
24 in dismissal of other defendants for a lack of personal jurisdiction (Dkt. #50) may apply to the
unserved defendants as well and this Court may similarly lack personal jurisdiction over those
defendants.